may be true but that argument is sustainable if, on the facts of the present case, Gurbakhash Singh was acting as an agent of the debtor when he wrote to the solicitors tendering the cheque. Mr. Wilson, counsel for the respondent eloquently argued that this was not so and that the letter of Gurbakhash Singh and the conduct of the creditor amounted to an independent contract and therefore clearly falls within illustration (c) to section 64. Illustration (c) reads as follows:—

"(c) *A.* owes *B.* $5,000. *C.* pays to *B.* $1,000 and *B.* accepts them, in satisfaction of his claim on *A.* This payment is a discharge of the whole claim."

As explained in *Firm Basdeo, Ram Sarup* v. *Firm Dilsukh Rai, Sewak Ram* [1] it is a question of fact wheher illustration (c) applies. One paragraph reads:—

"If a person sends a sum of money on the terms that it is to be taken, if at all, in satisfaction of a larger claim and if the money is kept, it is a question of fact as to the terms upon which it is so kept. Accord and satisfaction imply an agreement to take the money in satisfaction of the claim in respect of which it is sent. If accord is a question of agreement there must be either two minds agreeing or one of the two persons acting in such a way as to induce the other to think that the money is taken in satisfaction of the claim and to cause him to act upon that view. In either case it is a question of fact."

On the facts it is clear that a third party made an offer subject to conditions and under those conditions the creditor could either return the money to the offerer or retain the cheque and discharge the debtor's liabilities. His conduct in cashing the cheque and retaining the money can only be considered as an agreement to discharge the debtor from any further liability.

The appeal will therefore be dismissed with costs.

Barakbah C.J. (Malaya) and **Ismail Khan J.** concurred.

Appeal dismissed.

Solicitors: *Wrigglesworth & Co.; Wilson & Co.*

GOH SIEW WAH v. COLUMBIA FILMS OF MALAYSIA LTD.

[O.C.J, (Winslow J.) September 9, 1965]

[Singapore — Summons in Chambers No. 1173 of 1965 in Suit No. 1251 of 1965]

Companies — Company incorporated outside Singapore — Service of writ on company — Undertaking to accept service given by solicitor for company — Service on solicitor — Conditional appearance entered — Whether service valid — R.S.C. 1934 O. IX rr. 1 and 10 — Companies Ordinance (Cap. 174), ss. 301(1)(c) and 305.

Practice and Procedure — Service on company — Solicitor undertaking to accept service.

The plaintiff issued a writ in respect of his claim for damages for wrongful dismissal against the defendant company, which was incorporated outside Singapore but carried on business in Singapore. Under the provisions of section 301(1)(c) of the Companies Ordinance, the name and address of one Philip Lau was delivered to the Registrar of Companies for registration as a person resident in Singapore authorised to accept service of process on behalf of the company. The writ was taken out in the name of the company. The solicitors for the company undertook to accept service on behalf of the company and service was effected on the company's solicitors. Subsequently the company's solicitors entered conditional appearance and made an application to set aside the writ on the ground that it was addressed to the company and not to Philip Lau and alternatively that the service was irregular because the writ had not been correctly addressed.

Held: (1) section 305 of the Companies Ordinance relates to the question of the sufficiency of service and does not impose any requirement as to the wording of the writ itself and therefore the writ in this case was correctly addressed;

(2) as the solicitors for the company had undertaken to accept service, section 305 of the Companies Ordinance, which provides that process can be served on the person whose name had been registered with the registrar as the person authorized to accept process on behalf of the company, was rendered inoperative and therefore the writ was properly served in this case on the solicitors.

Cases referred to:—

(1) *The "O. Sambaur"* [1958] M.L.J. 85.

(2) *Pelajaran Nasional Indonesia* v. *Joe Seang & Co. Ltd.* [1958] M.L.J. 113.

(3) *Fester Fothergill and Hartung* v. *Russian Transport & Insurance Co.* [1927] W.N. 27.

CIVIL SUIT.

D. G. Ironside for the plaintiff.

D. E. S. Chelliah for the defendants.

Winslow J.: The plaintiff in this suit issued a writ in respect of his claim for damages for wrongful dismissal etc. against the defendant company (hereinafter called "the company"), a limited company incorporated outside the State but carrying on business within the State, at 32A Clemenceau House, Penang Lane, Singapore.

Under the provision of section 301(1)(c) of the Companies Ordinance (Cap. 174), the name and address of one Philip Lau of 32A Clemenceau House, Penang Lane, Singapore, was delivered to the registrar for registration as a person resident in the State authorised to accept service of process on behalf of the company.

Mr. D. E. S. Chelliah of Messrs. Drew & Napier, Chartered Bank Chambers, Singapore, accepted service on behalf of the company but only a conditional appearance was entered for the company on the ground that the writ was defective, in that it was addressed to the company and not to the said Philip Lau, and, in due course, by the present summons-in-chambers (No. 1173 of 1965), an application was made

to set aside the writ on this ground. Further, and in the alternative, it was claimed that the service was irregular because the writ had not been addressed as aforesaid.

I heard the application in chambers on 20th August, 1965 when I gave leave to amend the writ and to re-serve it on the company's solicitors and ordered the costs of this application to be taxed and paid to the company's solicitors.

On a written application by the plaintiff for the adjournment of the matter into open court for further argument pursuant to O. LI r. 23, I agreed to hear further argument and on 31st August, 1965 I heard fuller arguments on the point in question in open court which lasted for a whole day.

I have come to the conclusion that the order I made in chambers on 20th August, 1965 should be reversed and that the application should be dismissed with costs to the plaintiff.

Counsel for the company relied on the case of *The "O. Sambaur"* [1] where a writ addressed to the owner of the ship in question instead of to the owner of the ship and parties interested in the ship, was held to be improperly addressed and that the omission of the words "parties interested in the ship" was an irregularity which could be amended.

It is pertinent to note that rule 9(1) of the Admiralty Procedure Rules requires that a writ *in rem* shall be addressed to the owner and other persons interested in the ship. By contrast, section 305 of the Companies Ordinance reads —

> "Any process or notice required to be served on a company to which this Part of this Ordinance applies shall be sufficiently served if addressed to any person whose name has been delivered to the Registrar under this Part of this Ordinance and left at or sent by post to the address which has been so delivered".

In my opinion this is a section which is purely permissive, in that, if the writ had been addressed to Philip Lau and left at or sent by post to 32A Clemenceau House, Penang Lane, Singapore, that would suffice to prove service on the company.

Reference was also made to *Pelajaran Nasional Indonesia* v. *Joe Seang & Co. Ltd.* [2] in which Rigby J. held:

> "Where the law provides a particular method or form of procedure for effecting service, or a particular place at which, or to which, service may be effected, then there must be strict compliance with those provisions, and the court would set aside a judgment obtained by default where the requirements have not been complied with".

In that case the writ of summons had been served not at the registered office of the company in question but at some other address and it can, accordingly, be distinguished from the present case.

In the present case, service was effected on Mr. Chelliah under O. IX r. 1 as he had undertaken to accept such service. Such service accordingly dispenses with personal service and is an alternative form of service to that provided by statute if appearance is also entered.

O. IX r. 10 provides that where any statute makes provision for service or process on any corporation such process may be served in the manner so provided. The plaintiff has here seen fit to serve the writ under the provisions of O. IX r. 1 instead of adopting the method of service provided by section 305 of the Companies Ordinance.

The mere fact that the appearance which has been entered is conditional owing to the alleged defect in the writ does not, in my opinion, render such service bad, because service has been accepted and conditional appearance has been entered merely to test the regularity of the writ itself.

The writ conforms with the requirements of O. II r. 3 and is in accordance with the form prescribed viz., Form 2 in Schedule A. It was contended that section 305 of the Companies Ordinance requires the writ itself to be addressed on its face to Philip Lau, the person authorised to accept service on behalf of the company, and not to the company itself and that Form 2 only applies in the case of a defendant within the jurisdiction and not to a defendant company incorporated abroad.

I cannot quite see the force of this contention in the light of the fact that section 305 of the Companies Ordinance relates to the question of the sufficiency of service and does not impose any requirement as to the wording of the writ itself as in the case of *The "O. Sambaur"*. In fact if the face of the writ had read "To Philip Lau of 32A Clemenceau House, Penang Lane, Singapore" instead of "To Columbia Films . . . ", one would find it difficult to make sense of the command which follows requiring Philip Lau to "cause an appearance to be entered for you . . . ". The "you" intended by the writ is the company and not Philip Lau who is only the person authorised to accept service on behalf of the company.

In all the circumstances, therefore, I hold that the writ is correctly addressed. There is authority to show that, for the purposes of section 305, it would be sufficient to enclose a writ in an envelope and to address the envelope to Philip Lau and to leave it at the registered address or to send it by post to that address. (See *Fester Fothergill and Hartung* v. *Russian Transport and Insurance Co.* [3]).

The object of section 305 is to provide a method of service on a company incorporated abroad which carries on business locally. It is

not the only method of service and its justification is the convenience of the public. It is a method which is an alternative to any other method provided by the rules. Where a solicitor undertakes to accept service under O. IX r. 1 it must be obvious that the defendant company in question must have so instructed him and that once the company has been so served section 305 ceases to operate. In fact I would go further to hold that an undertaking to accept service under O. IX r. 1 renders section 305 inoperative as from the date of that undertaking.

As Mr. Chelliah undertook to accept service on behalf of the company, no doubt on Philip Lau's instructions, the plaintiff's solicitor sent the writ to him. If he had not so intimated, the plaintiff could have posted the writ to Philip Lau and been completely covered by section 305.

It is to be observed, however, that the notice of service on page 3 of the writ states that the writ "is served on the company by addressing it to Philip Lau . . . ". This does not appear to be strictly correct and I can only assume that after the writ had been prepared, Mr. Chelliah's letter undertaking to accept service arrived. Whatever means was adopted to effect service complaint is not being made that the service is bad or that the parties are not properly before the court.

I mention this merely because the reference (by implication) in the notice of service to the provisions of section 305 may well have been responsible for the action taken by Mr. Chelliah to challenge the regularity of the writ.

The application is accordingly dismissed with costs.

Application dismissed.

Solicitors: *Ironside & De Souza; Drew & Napier.*

MAJUMDER v. ATTORNEY-GENERAL OF SARAWAK

[O.C.J. (Lee Hun Hoe J.) September 10, 1965]

[Kuching — Civil Suit No. C/122/63]

Crown — Servant of Crown — Whether designated officer — Whether entitled to inducement pay.

Declaration — Claim for — Discretion of court — Designated officer — Inducement pay — Prerogative of Governor-in-Council — Overseas Service Ordinance, 1961 — General Orders.

The plaintiff, a doctor, after serving in various capacities in India went to England in 1955 for post graduate studies. While he was working in England (after completion of his studies) he applied for the post of medical officer in Sarawak. He was interviewed in England but his letter of provisional appointment was sent to him at an address in Calcutta which he had provided. The plaintiff received his formal letter of appointment on his arrival in Sarawak on December 6, 1958 and he was confirmed in his appointment on December 4, 1961. He was however not in receipt of inducement pay like other expatriate officers. Sometime in 1963 all expatriate officers except the plaintiff were informed of their future in the service and the benefit they would get under the Malaysia Retirement Scheme. The plaintiff thereupon brought an action against the Government of Sarawak by making the Attorney-General of Sarawak the nominal defendant claiming three declarations: (1) that he is a member of Her Majesty's Overseas Civil Service; (2) that he is a "designated officer" within the meaning of the Schedule to the Overseas Service Ordinance; (3) that it would be unlawful to refuse to the plaintiff benefits such as inducement pay payable to a member of Her Majesty's Overseas Civil Service.

At the trial it was admitted on behalf of the defendant that the plaintiff was a member of Her Majesty's Overseas Civil Service that all such members except the plaintiff was in receipt of inducement pay and that the plaintiff was an "entitled officer" for the purposes of the Compensation and Retiring Benefits Order-in-Council, 1963.

Held: (1) as the defendant has conceded that the plaintiff is a member of Her Majesty's Overseas Civil Service there was no reason to make the first declaration as the plaintiff's right was no more in dispute;

(2) the plaintiff was entitled to a declaration that he was a "designated officer" within the meaning of the Schedule to the Overseas Service Ordinance, 1961;

(3) as to the question whether a civil servant is entitled to inducement pay or not is entirely a prerogative for the Governor-in-Council as laid down in the General Orders, it would be contrary to public policy for the court to make such a declaration resulting in the unnecessary interference of a prerogative right.

Cases referred to:—

(1) *Barraclough* v. *Brown* [1897] A.C. 615, 624.

(2) *Russian Commercial & Industrial Bank* v. *British Bank of Foreign Trade* [1921] 2 A.C. 438, 448.

(3) *Ruslip-Northwood Urban District Council* v. *Lee* (1935), 143 L.T. 208, 214.

(4) *Vine* v. *National Dock Labour Board* [1956] 3 All E.R. 944.

(5) *Wigg & Anor.* v. *Attorney-General for Irish Free State* [1927] A.C. 674.

(6) *Right of Passage over Indian Territory Case (Portugal* v. *India)* I.C.J. Rep. (1957), 125, 142.

(7) *Re Dulles Settlement Trusts* [1951] 2 All E.R. 60, 70, 71.

(8) *Jacobs* v. *Batavia* [1924] 2 Ch. 324.

(9) *McClelland* v. *Ireland Health Board* [1957] 2 All E.R. 129.

(10) *Dunn* v. *The Queen* [1896] 1 Q.B. 116.

(11) *Shenton* v. *Smith* [1895] A.C. 229.

(12) *Terrell* v. *Secretary of State for the Colonies* [1953] 2 Q.B. 482.

(13) *Jopp* v. *Wood* (1865), 34 L.J. Ch. 212, 218.

(14) *Gillis* v. *Gillis* (1814), Ir.R. 8 Eq. 597.

(15) *R.* v. *North Curry (Inhabitants)* (1825), 4 B. & C. at p. 959.

(16) *Curtis* v. *Chemical Cleaning & Dyeing Co.* [1951] 1 K.B. 805, 807.

(17) *L'Estrange* v. *F. Graucob Ltd.* [1934] 2 K.B. 394, 403.